

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
KANSAS CITY DIVISION**

**QUINTERO COMMUNITY  
ASSOCIATION, et al.,**

**Plaintiffs,**

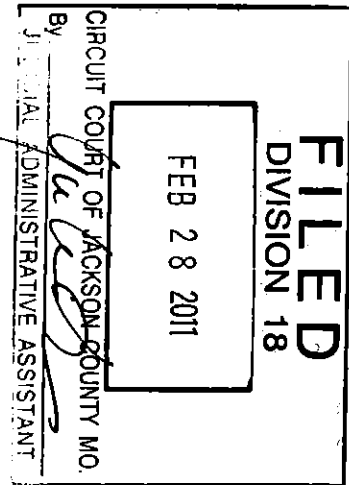
**v.**

**HILLCREST BANK, et al.,**

**Defendants.**

**Case No. 1016-CV-13693**

**Division 18**



**DEFENDANT HILLCREST BANK'S MOTION FOR SUBSTITUTION OF PARTIES**

Comes Now Defendant Hillcrest Bank, by its attorneys, Kelly A. Campbell, of Spencer Fane Britt & Browne LLP, and pursuant to Missouri Rule 52.13, respectfully moves this Court to allow for the substitution of the Federal Deposit Insurance Corporation as Receiver for Hillcrest Bank, for the reasons set forth below:

1. On or about May 3, 2010 Plaintiffs filed a Petition against Hillcrest Bank.
2. The Petition seeks recovery for numerous causes of action including breach of contract, fraudulent misrepresentation, breach of fiduciary duty, civil conspiracy, aiding and abetting, and negligence among other allegations.
3. By order dated October 22, 2010, the Kansas State Bank Commissioner ("Commissioner"), in cooperation with the Federal Deposit Insurance Corporation ("FDIC"), determined that the FDIC would serve as receiver for Defendant Hillcrest Bank, in part because it appeared that Defendant Hillcrest Bank was critically undercapitalized and therefore terminated Defendant Hillcrest Bank's authority to engage in banking business. A copy of this order has been attached as Exhibit A.

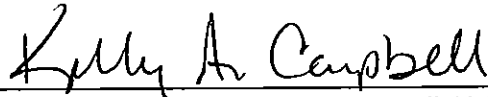
4. By letter dated October 22, 2010, the FDIC notified Hillcrest Bank that Commissioner had appointed FDIC as Receiver of Hillcrest Bank. The notice advised that the FDIC was taking possession of Hillcrest Bank pursuant to the terms of that appointment. A copy of that letter is attached as Exhibit B.

5. Missouri Rule 52.13 provides that when there is a change in interest and/or liability, the proper parties may be substituted and/or added.

6. Since the FDIC is the Receiver for Defendant Hillcrest Bank, the FDIC as Receiver should be substituted as a party in the instant action.

WHEREFORE, Defendant Hillcrest Bank respectfully moves this Court to allow for the substitution of the Federal Deposit Insurance Corporation as Receiver for Hillcrest Bank and for such other relief as this Court deems appropriate.

SPENCER FANE BRITT & BROWNE LLP



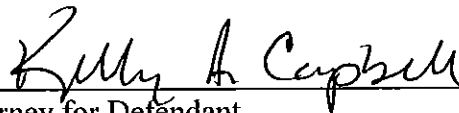
Kelly A. Campbell Mo. Bar # 43452  
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Suite 1400  
Kansas City, MO 64106  
(816) 474-8100  
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[kcampbell@spencerfane.com](mailto:kcampbell@spencerfane.com)  
ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that on this 28<sup>th</sup> day of February, 2011, a copy of the foregoing was duly hand-delivered, to:

Linus L. Baker  
6732 West 185th Terrace  
Stillwell, KS 66085-8922

Attorney for Plaintiffs

  
\_\_\_\_\_  
Attorney for Defendant



**STATE OF KANSAS  
OFFICE OF THE STATE BANK COMMISSIONER  
DIVISION OF BANKING**

IN THE MATTER OF

Hillcrest Bank  
11111 W. 95<sup>th</sup> Street, Suite 100  
Overland Park, Kansas 66214  
SB. 22173

Case No. 2009-284

**DECLARATION OF CRITICALLY UNDERCAPITALIZED CONDITION  
AND TENDER OF RECEIVERSHIP**

**WHEREAS**, Hillcrest Bank is a duly organized Kansas banking corporation, chartered by the State of Kansas, and as such, is subject to the Kansas Banking Code, K.S.A. 9-101 *et seq.*; and

**WHEREAS**, pursuant to the Kansas Statutes, the State Bank Commissioner is the official charged with administering and enforcing the Kansas Banking Code, to ensure proper management and operation of Kansas banks to protect depositors; and

**WHEREAS**, K.S.A. 9-1902a defines "critically undercapitalized" as follows:

"A bank or trust company is critically undercapitalized when the ratio of its capital to total assets is equal to or less than 2.0%. For purposes of this section, capital shall be the sum total of the institution's common stock, surplus, undivided profits, capital reserves, noncumulative perpetual preferred stock and outstanding cumulative perpetual preferred stock (including related surplus)."

**WHEREAS**, pursuant to K.S.A. 9-1903, the Commissioner took charge of Hillcrest Bank, which, upon examination and report to the Commissioner, appeared to be critically undercapitalized on October 22, 2010; and

**WHEREAS**, pursuant to K.S.A. 9-1905, the Commissioner completed a thorough investigation of the affairs and condition of Hillcrest Bank and adopts herein the findings of fact that are set forth in the Order Taking Charge which are reflective of the bank's actual condition; and

**WHEREAS**, the Commissioner concludes, as a matter of law, that Hillcrest Bank is "critically undercapitalized" within the meaning of K.S.A. 9-1902a; and

**WHEREAS**, the Commissioner is satisfied that Hillcrest Bank cannot sufficiently recapitalize, resume business, or liquidate its indebtedness to the satisfaction of its depositors and creditors.

**NOW, THEREFORE, BE IT RESOLVED AND DECLARED** that pursuant to K.S.A. 9-1905, the Commissioner is satisfied that Hillcrest Bank cannot sufficiently recapitalize, resume business, or liquidate its indebtedness to the satisfaction of depositors and creditors, and terminates Hillcrest Bank's authority to engage in banking business.

**BE IT FUTHER RESOLVED AND DECLARED** that pursuant to K.S.A. 9-1905 and 9-1907, the Commissioner knowing that the deposits of said bank are insured by the Federal Deposit Insurance Corporation, the Commissioner hereby appoints the Federal Deposit Insurance Corporation as receiver of Hillcrest Bank and calls upon it to perform the duties of a receiver pursuant to Chapter 9, Article 19 of the Kansas Statutes Annotated.

**IT IS SO ORDERED. DONE THIS 22<sup>nd</sup> DAY OF OCTOBER, 2010, AT TOPEKA, KANSAS.**

BY:

  
JUDI M. STORK, ACTING STATE BANK COMMISSIONER

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that on this \_\_\_\_ day of  
(print your name)

October, 2010, I personally served upon \_\_\_\_\_  
(print recipient's name)

at the following address: \_\_\_\_\_  
(main bank or branch address)

at \_\_\_\_\_ pm, a true and correct copy of the **DECLARATION OF CRITICALLY**  
(fill in time)

**UNDERCAPITALIZED CONDITION AND TENDER OF RECEIVERSHIP.**

\_\_\_\_\_  
Signature

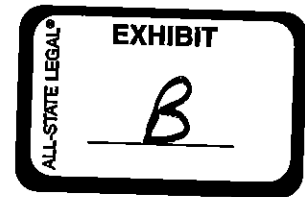
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



**FDIC**

**Division of Resolutions and Receiverships**  
**Dallas Regional Office**  
1601 Bryan Street  
Dallas, Texas 75201



Telephone (214) 754-0098

October 22, 2010

Ms. Judi M. Stork, Acting Bank Commissioner  
Office of the State Bank Commissioner  
State of Kansas  
Topeka, Kansas

**Subject: Hillcrest Bank**  
**Overland Park, Kansas – In Receivership**  
**Acceptance of Appointment as Receiver**

Dear Acting Commissioner Stork:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the captioned depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

FEDERAL DEPOSIT INSURANCE CORPORATION

By: *Daniel M. Bell*  
Name: Daniel M. Bell  
Title: Receiver-in-Charge